Office-Supreme Court, U.S.
FILED
OCT 15 1963
JOHN F. DAVIS, CLERK

IN THE

# Supreme Court of the United States

October Term, 1963

No. 559

ELCEE LUCAS, J. J. LANE, E. O. SIMPSON and E. D. JACKSON,

*Appellants,*

vs.

TOM ADAMS, Secretary of State of the State of Florida, BOB HARRIS, T. K. STOKES, JR., LEM MERRETT, JULIAN WARREN AND FLETCHER MORGAN As members of the County Commission, and TOM GREENE, individually,

*Appellees.*

## JURISDICTIONAL STATEMENT

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF FLORIDA JACKSONVILLE DIVISION

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## JURISDICTIONAL STATEMENT

Appellants appeal from the judgment of the United States District Court, Middle District of Florida, Jacksonville Division, No. 63-51-Civil-J, entered on the 22nd day of May, 1963, which denied appellants' Application for a Final Injunction to Restrain the Enforcement of Senate Bill No. 10-X (63) AN ACT PROVIDING FOR THE APPORTIONMENT OF THE MEMBERSHIP OF THE LEGISLATURE OF THE STATE OF FLORIDA; AMENDING SECTION 10.01, 10.03 and ADDING SECTION 10.04, FLORIDA STATUTES; PROVIDING FOR AN ELECTION; PROVIDING FOR FILLING VACANCIES; PROVIDING EFFECTIVE DATE so far as this law applied to the Election of Representation in the House of Representatives for the State of Florida, as passed by a Special Session of the Florida Legislature and approved by the Governor on February 4, 1963—Appendix 13-a, and submit this statement to show that the Supreme Court of the United States has jurisdiction of this appeal and that a substantial question is presented.

## OPINION BELOW

The opinion of the United States District Court for the Middle District of Florida, Jacksonville Division as shown in the accompanying Appendix, Page 1-a.

## JURISDICTION

This suit was brought in the United States District Court for the Middle District of Florida, Jacksonville Division before a three judge Court under 28 U.S.C. Section 2281 and 28 U.S.C. Section 2284 (1) to enjoin the defendants, TOM ADAMS, Secretary of the State of Florida, BOB HARRIS, T. K. STOKES, JR., LEM MERRETT, JULIAN WARREN and FLETCHER MORGAN as members of the County Commission for Duval County, Florida, and TOM GREENE, individually from holding an election for representation in the House of Representatives pursuant to and by enforcing the Florida Apportionment Act passed by a special session of the Florida Legislature and approved by the Governor on February 4, 1963, as Senate Bill No. 10-X (63) Appendix 13-a. The Order of the District Court denying the injunctive relief sought and dismissing the complaint, was entered of the 22nd day of May, 1963. A Notice of Appeal was filed in this Court on the 19th day of July, 1963. The jurisdiction of the Supreme Court of the United States to review this decision by direct appeal is conferred By 28 U.S.C. Section 1253 which provides:

> "Except as otherwise provided by law, any party may appeal to the Supreme Court from an order granting or denying, after notice and hearing, an interlocutory or permanent injunction in any civil action suit or proceeding required by any act of congress to be heard and determined by a district court of three judges."

To sustain the jurisdiction of this court, this case must be one which properly invoked the three-judge jurisdiction under 28 U.S.C. Section 2281. Under the code provisions, this court has stated, that a three-judge court jurisdiction can be invoked only when the claim of unconstitutionality of a state statute is substantial ex parte Poresky, 290 U.S. 30; California Water Service Co. v. City of Redding, 304 U.S. 252. In recent decision which involved the issue of Reapportionment of State Legislature this court has held the U. S. District Court had jurisdiction to determine the constitutional issue raised in such Apportionment case. Baker v. Carr, 82 S.Ct. 691 (1962); Gray v. Sanders, 83 S.Ct. 801 (1963)

## QUESTIONS PRESENTED

The United States District Court for the Middle District of Florida by its Order entered herein has refused to enjoin the enforcement of the 1963 Apportionment Act of Florida, designated as Senate Bill No. 10-X (63), notwithstanding its alleged unconstitutionality. The questions presented are:

1. The right to vote and to have one's vote counted in the election of a public officer is abridged unless the vote of one person is given approximately equal weight to that of other citizens in the state in the election of a single public officer voted on by all, or in the election of a number of similar public officers who have equal rank in the same governmental body, but elected from separate groups or constituencies within the state.

2. The Florida Reapportionment act is not free of invidious discrimination by securing to the citizens living in each county, regardless of population, the right to elect at least one representative to the state legislature, but failing to secure to a somewhat similar number of citizens living in the more popular counties the right to also nominate and elect at least one representative to the Florida Legislature.

5. Under the Florida Constitution a representative is required to be a duly qualified elector in the respective counties and district for which he is chosen, and any election pursuant to an apportionment act for such legislators that fail to provide for a division of the county into districts from which each of more than one legislator may be elected not only violates the State Constitution, but also violates the Fourteenth Amendment to the Constitution of the United States.

## STATUTES INVOLVED

1. The 1963 Apportionment Act of Florida designated as Chapter 63-1 (X) Senate Bill No. 10-X (63) - AN ACT PROVIDING FOR THE APPORTIONMENT OF THE MEMBERSHIP OF THE LEGISLATURE OF THE STATE OF FLORIDA AMENDING SECTIONS 10.01, 10.03 AND ADDING SECTION 10.04, FLORIDA STATUTES; PROVIDING FOR AN ELECTION, PROVIDING FOR FILLING VACANCIES; PROVIDING EFFECTIVE DATE.

2. FLORIDA STATUTES 99.051—
WHEN NOMINATED NAMES TO APPEAR IN GROUPS

When an office requires the nomination of more than one candidate, as many groups shall be numerically designated as there are vacancies to be filled by nomination, each candidate shall indicate the group in which he desires his name to appear on the ballot.

3. HOUSE JOINT RESOLUTION NO. 5-X (63)
A Joint Resolution proposing an amendment of Article VII of the Constitution of the State of Florida; providing for apportionment of the Florida Legislature; providing for submission to the electors.

## STATEMENT

The principle facts involved herein are as follows:

On July 23, 1962, a Three Judge District Court in the cases of Peter B. Sobell, on behalf of others vs. Tom Adams, Case No. 182-62-M-Civil-DD, and the case of Richard N. Swann v. Tom Adams, case No. 186-62-M-Civil-DD, entered an opinion in which it found that the then existing provisions of the Con-

stitution and statutes of the State of Florida which related to the nomination and election of the members of the Senate and the House of Representatives of the Legislature of the State of Florida were invidiously discriminatory and in conflict with the Equal Protection clause of the Fourteenth Amendment. The Court however refused to determine the type of representation the state should have that would square with the provisions of the Fourteenth Amendment of the Constitution of the United States and instead continued the cause to allow the State Legislature to reapportion itself prior to August 13, 1962.

On July 24, 1962, the Governor of Florida issued a call for the Legislature to convene in extraordinary session on August 1, 1962, for the sole purpose of considering reapportionment of the Florida Legislature. The Legislature met, took action and adjourned.

The Legislature withdrew from electoral consideration the proposed amendment to the Florida Constitution relating to legislative apportionment which it had submitted at its 1961 session. S.J.R. No. 216, Laws of Florida, Acts of 1961, p. 1165. A new proposal for a constitutional amendment, incorporated in House Joint Resolution 30X, passed both Houses and was submitted to the voters of Florida at the regular election held in November, 1962. The proposed amendment continued the bicameral legislature which Florida has had since it became a state. It carried on the traditional division of the State into senatorial districts composed of one or more counties and the allocation of one or more representatives to each county. The proposed amendment gave one representative to each of the counties of the State. Provisions were made for representative ratios. A representative ratio was defined as the quotient obtained by dividing the population of the State by the number of counties. Each county would have one additional representative for each representative ratio or major fraction thereof. Any county having more than four representative ratios shall have another representative. The Senate was to consist of forty-six members, each representing a district.

The Three Judge District Court approved House Joint Resolution 30X in its opinion issued in August, 1962; however,

at the general election in November, 1962 the Florida voters turned down the proposed Constitutional Amendment, thereby forcing the Governor to call another special session of the Legislature. This special session of the Legislature passed Senate Bill 10-X (63) which was approved by the Governor on February

This suit was brought pursuant to a Petition filed in the United States District Court, Middle District of Florida, alleging that Senate Bill 10-X (63), as approved by the Legislature and Governor of Florida, is invidiously discriminatory and in conflict with the Equal Protection clause of the Fourteenth Amendment

The Plaintiffs are Citizens of the State of Florida, residing in Duval County, Florida. All of the Plaintiffs are duly registered voters, homeowners and taxpayers, residing in Duval County All of the Plaintiffs are members of the Negro race. Approximately 1/3 of the population of Duval County are members of the Negro race and above 1/4 of the voting strength of the County are Negroes. There are more registered Negro voters in Duval County than the total population of almost 11 of the 67 counties in the State of Florida, yet each county in the State of Florida has at least one representative elected by the residents of that particular county. Some counties have less than 1,000 total population.

The present complaint was filed in District Court on March 19, 1965. The main contention of the plaintiffs is that the Apportionment Act designated as Senate Bill 10-X (63) failed to divide the larger counties into representative districts based on population, notwithstanding the Apportionment of the House of Representatives under the act was based chiefly upon population numbers. The Defendants made a Motion to Dismiss and a Motion for Summary Judgment.

On May 22, 1963, the Three Judge Court granted Defendants' Motion to Dismiss and for Summary Judgment on the grounds that the complaint failed to state a cause of action (App. pp. 2-a).

## THE QUESTIONS PRESENTED ARE SUBSTANTIAL

FLORIDA APPORTIONMENT ACT DESIGNATED AS 10-X (63) IS INVIDIOUSLY DISCIMINATORY AND IN CONFLICT WITH THE EQUAL PROTECTION CLAUSE OF THE FOURTEENTH AMENDMENT.

The Florida Apportionment Act designated as Senate Bill 10 X (63) does not reapportion its House of Representatives on any rational basis which protects the individual voter residing in a large county so as to allow him to choose one representative from a number of residents which is in any way comparative with the number of residents living in the smaller counties which have the absolute right to elect at least one representative. The Reapportionment Act as drawn and applied deny Petitioners the full right to vote, and the equal protection of the law.

The inequality complained of by the individual voter residing in the more populated recognized units or counties is the great disparage of weight given his vote in comparison to the weight given the vote of a citizen residing in a much smaller populated unit or county in the selection of a single representative to occupy a seat in the Florida Legislature. This great disparage of weight given to one voter over another presents an important constitutional question because it effects the rights of million of voters to share in the operation of their state government. The importance of this question was pointed up by Justice Black in *Colgrove v. Green* opinion, 66 S.Ct. 1198 and 328 U.S. 559. Justice Black in his dissenting opinion took the following position:

> "The assertion here is that the right to have their vote counted is abridged unless the vote is given approximately equal weight to that of other citizens. It is my judgment that the District Court had jurisdiction; that the complaint presented a justifiable case and controversy, and that petitioners had standing to sue, since the facts alleged show that they have been injured *as individuals*. The complaint attacked the 1901 Apportionment Act as unconstitutional and alleged facts indicating that the act denied petitioners the full right to vote and equal protection of the laws. These allegations have not been denied, under these circumstances,

and since there is no adequate legal remedy for depriving a citizen of his right to vote, equity can and should grant relief.

Mr. Justice Black went on to say:

"No one would deny that the equal protection clause would also prohibit a law that would expressly give certain citizens a half-vote and others a full vote. The probable effect of the 1901 State Apportionment Act in the coming election will be that certain citizens, and among them the petitioners, will in some instances have votes only one-ninth as effective in choosing representatives to Congress as the votes of other citizens. *Such discriminatory legislation seems to me exactly the kind that the equal protection clause was intended to prohibit.*" (italics supplied for emphasis)

In the more recent decisions, this Court has felt the need to take a more decisive stand in protecting this type of equality between voters in the election of public officers. *Baker v. Carr*, 82 S.Ct. 691 and *Gray v. Sanders*, 83 S.Ct. 801 (1963).

The District Court ruled that the issue raised by plaintiffs recover on a theory under the United States Constitution that novel and has never heretofore been found to afford the re f prayed for. Plaintiffs differ with the District Court as to the vel nature of plaintiffs' theory of recovery, but admit that this urt has not ruled squarely on the alleged facts in this case. wever, it is the contention of plaintiffs that this Court did de le the issue raised by plaintiffs in this case in its decision ren ed in *Gray v. Sanders*, and submit that the Court's ruling in at opinion is the law that should govern the issues in this case.

We believe therefore, that the questions presented by the peal are substantial and that they are of public importance.

Respectfully submitted,

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## CERTIFICATE OF SERVICE

I do hereby certify that on this 4th day of October, A.D. 1965, I mailed a true and correct copy of the foregoing Jurisdictional Statement with Appendixes to the attorneys for Appellants by placing in a properly addressed envelope with sufficient postage thereon and depositing same in the U. S. Mail.

Releford McGriff

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